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CARDWELL *v.* NORFOLK & W. RY. CO.

March 13, 1913.

[77 S. E. 612.]

1. New Trial (§ 70*)—Grounds—Verdict Contrary to Evidence in General.—The verdict of the jury is entitled to much respect, and the trial court should not set it aside unless it is plainly against the evidence or is without evidence to support it, as when there has been no proof whatever of a material fact or not sufficient evidence of the fact or facts in issue; but where some evidence has been given tending to prove the facts in issue, or the evidence consists of circumstances and presumptions, a new trial will not be granted merely because the court would have given a different verdict, but to warrant a new trial in such a case the evidence should be plainly insufficient to support the verdict.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 142, 143; Dec. Dig. § 70.* 10 Va.-W. Va. Enc. Dig. 454; 14 Va.-W. Va. Enc. Dig. 781; 15 Va.-W. Va. Enc. Dig. 740.]

2. Trial (§ 142*)—Taking Case from Jury—Inferences from Evidence.—Where the inferences from the evidence are not certain, it is for the jury, and not for the court, what inferences are to be drawn.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 337; Dec. Dig. § 142.* 5 Va.-W. Va. Enc. Dig. 350; 14 Va.-W. Va. Enc. Dig. 415; 15 Va.-W. Va. Enc. Dig. 359.]

3. Appeal and Error (§ 977*)—Discretion of Lower Court—New Trial.—Greater latitude is allowed the trial court in granting than in refusing new trials, since the refusal to grant a new trial operates as a final adjudication between the parties, while the granting of a new trial affords further opportunity for showing the truth, without concluding either party.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3860-3865; Dec. Dig. § 977.* 1 Va.-W. Va. Enc. Dig. 462.]

4. New Trial (§ 69*)—Grounds—Credibility of Witnesses.—The jury may discard the preponderance of evidence as unworthy of credence and adopt the evidence of a single witness upon which to base their verdict, and such verdict cannot be disturbed if the evidence of that witness is sufficient, standing alone, to support it; and in such case the preponderance of the evidence cannot influence the trial court in considering a motion for a new trial.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. § 141, Dec. Dig. § 69.* 10 Va.-W. Va. Enc. Dig. 459; 14 Va.-W. Va. Enc. Dig. 782; 15 Va.-W. Va. Enc. Dig. 741.]

5. New Trial (§ 72*)—Grounds—Verdict Contrary to Weight of

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Evidence.—In a jury case turning upon the weight of the evidence and not solely upon the credibility of witnesses, the trial court, on motion for a new trial, must necessarily pass, to some extent at least, upon the weight of the evidence; but the verdict ought not to be set aside unless manifest injustice has been done, especially when the case turns upon facts or inferences to be drawn from the facts proved and as to which reasonable men might differ.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 146-148; Dec. Dig. § 72.* 10 Va.-W. Va. Enc. Dig. 457; 14 Va.-W. Va. Enc. Dig. 781; 15 Va.-W. Va. Enc. Dig. 740.]

6. Negligence (§ 136*)—Action—Question for Jury—Mixed Question of Law and Fact.—Negligence is a mixed question of law and fact to be decided by the court when the facts are undisputed or conclusively proved, but not to be withdrawn from the jury when they are disputed or the evidence is conflicting.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 277 353; Dec. Dig. § 136.* 10 Va.-W. Va. Enc. Dig. 414; 14 Va.-W. Va. Enc. Dig. 774; 15 Va.-W. Va. Enc. Dig. 733.]

7. Master and Servant (§§ 278, 281*)—Action for Injuries—Sufficiency of Evidence.—Evidence, in a servant's action for injuries from being thrown from a hand car, where he alleged negligence in furnishing a defective hand car and negligence of defendant's employee and agent in the manner of operating the car, and in which defendant set up his contributory negligence, held sufficient to sustain a verdict for the plaintiff.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954-972, 977, 987-996; Dec. Dig. §§ 278, 281.* 9 Va.-W. Va. Enc. Dig. 725; 15 Va.-W. Va. Enc. Dig. 659.]

Error to Circuit Court, Campbell County.

Action by William L. Cardwell against the Norfolk & Western Railway Company. Judgment for defendant, and plaintiff brings error. Reversed, and judgment entered for plaintiff.

Volney E. Howard, of Lynchburg, *Frank Nelson*, of Rustburg, and *Thos. J. Williams*, of Lynchburg, for plaintiff in error.

F. S. Kirkpatrick, of Lynchburg, and *M. McCormick*, of Roanoke, for defendant in error.

CHAMBERS v. CITY OF ROANOKE.

Jan. 16, 1913. Rehearing denied June 14, 1913.

[78 S. E. 407.]

1. Licenses (§ 8*)—Produce Venders—Curb Tax.—Act March 3, 1896 (Laws 1895-96, c. 625 [Code 1904, § 1042a]), declaring it un-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.